IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 120 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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KANCHANJUNGA INVESTMENTS P LTD

Versus

COMMISSIONER OF INCOEM TAX

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Appearance:

MR RK PATEL for Petitioner No. 1

MR MANISH R BHATT for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 18/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference pertaining to the assessment years 1977-78, 1976-77, 1980-81 and 1981-82, one question is referred at the instance of the assessee and five questions are referred at the instance of the Revenue for the different assessment years. At the instance of the assessee, the following question is referred for all the assessment years:

1. "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the alleged interest had ever accrued to the applicant from Telerad Pvt.Ltd. for assessment year 1976-77 (Rs. 27,105), 1977-78 (Rs.30,175), 1980-81 (Rs.34,860) and 1981-82 (Rs. 37,304) ?"

2. The questions referred at the instance of the Revenue for the relevant assessment years are as under :

2. "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in setting aside the order made by the Commissioner of Income-tax under section 263 of the Income-tax Act, 1961 ?"

3. "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in confirming the order made by the Commissioner of Income tax (Appeals) deleting the amount of Rs. 5,30,456/=?"

4. "Whether, the Appellate Tribunal is right in law in deleting the additions made on the basis of compound interest ?"

5. "Whether, the Appellate Tribunal is right in law in deleting the additions made on the basis of compound interest ?"

6. "Whether, the Appellate Tribunal is right in law in deleting the interest charged by the Income tax Officer under section 215 of the Income tax Act, 1961 ?"

3. We have heard Mr. Karia, learned counsel for the assessee and Mr. Tanvish Bhatt, learned Additional Standing Counsel for the Revenue. The learned counsel have pointed out that in respect of assessment year 1975-76, the Tribunal had rendered a decision giving rise

to ITR No. 195 of 1984 and that under the said Reference, questions, more or less similar to those arising in the present Reference, were referred for the opinion of this Court. However, this Court was of the view that in view of the material on record it was not possible to answer the questions referred and therefore this Court set aside the orders passed by the authorities below including the order of the Tribunal and the Assessing Officer was directed to consider the matter afresh with liberty to produce the relevant evidence on the record of the case. This Court further clarified that it was open to the Assessing Officer to call for evidence for further information if need arose and that the Assessing Officer will pass an order without being influenced by the orders passed by the Commissioner of Income-tax or the Appellate Tribunal or any observations made by this Court in the decision dated 20th September 1999 disposing of ITR No. 195 of 1984.

4. Since this Court has directed the Assessing Officer to frame assessment de novo after permitting the assessee to produce the relevant evidence and also with liberty given to the Assessing Officer to call for evidence for further information, and since the Tribunal had passed the order giving rise to the present Reference by following its decision for the assessment year 1975-76 giving rise to ITR No. 195 of 1984, following the aforesaid decision dated 20th September 1999, we decline to answer the questions referred for our opinion, and following the aforesaid decision in ITR No. 195 of 1984, we set aside the orders passed by the authorities below including the order of the Tribunal and the Assessing Authority is directed to consider the matter afresh with liberty to the assessee to produce the relevant evidence on the record of the case. It goes without saying that the Assessing Officer will pass an order without being influenced by the orders passed by the Commissioner of Income-tax or the Appellate tribunal or any observations made by this Court.

5. At this stage, we may point out that Question No.6 quoted hereinabove with reference to assessment year 1981-82 was not referred for our opinion in Income Tax Reference No. 195 of 1984. However, since we have set aside the orders of the authorities below and remanded the matter for de novo enquiry, this question would not survive and hence, we decline to answer the said question also.

6. Under the circumstances, we direct the Tribunal to pass an appropriate order keeping the aforesaid

observations in mind. We decline to answer the Reference in view of the aforesaid facts and circumstances of the case.

7. The Reference stands disposed of accordingly with no order as to costs.

[ M.S. Shah, J. ]

rmr. [ K.A. Puj, J. ]